

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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HECTOR LOPEZ,

**Case No.: 07 cv 10707(PKL)**

Plaintiff,

-against-

RICHARD WELLS, NEW ENGLAND MOTOR  
FREIGHT, INC.,

**ANSWER AND DEFENSES  
TO AMENDED COMPLAINT**

Defendant(s).

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**PLEASE TAKE NOTICE**, that defendants RICHARD WELLS and NEW ENGLAND MOTOR FREIGHT, INC. by their attorneys, Abrams, Fensterman, Fensterman, Eisman, Greenberg, Formato & Einiger, LLP, hereby interpose the following answer to the plaintiff's Amended Complaint:

**AS AND FOR A RESPONSE TO THE FIRST CAUSE OF ACTION**

1. Answering defendants deny information and/or knowledge sufficient to form a belief as to the allegations contained in paragraph marked "2" of plaintiff's Amended Complaint, and therefore deny same.

2. Answering defendants deny each and every allegation contained in paragraph marked "3" of plaintiff's Amended Complaint, except admit defendant, RICHARD WELLS, is an individual residing in Meriden, Connecticut.

3. Answering defendants deny each and every allegation contained in paragraph marked "4" of plaintiff's Amended Complaint, except admit defendant, NEW ENGLAND MOTOR FREIGHT, INC., is a New Jersey corporation authorized to do business in the State of New York.

4. Answering defendants deny each and every allegation contained in paragraphs marked "5" and "11" of plaintiff's Amended Complaint, except admit that on September 22, 2006, defendant, RICHARD WELLS, was employed by defendant NEW ENGLAND MOTOR FREIGHT, INC.

5. Answering defendants deny each and every allegation contained in paragraphs marked "6" "7" "8" "9" "10" and "14" of plaintiff's Amended Complaint, except admit that on September 22, 2006, defendant, NEW ENGLAND MOTOR FREIGHT, INC. owned a 1998 Volvo Tractor assigned New Jersey license # AE849B that was operated by defendant RICHARD WELLS.

6. Answering defendants deny each and every allegation contained in paragraphs marked "12", "13", "15", "16", "17", "18" and "19", "of plaintiff's Amended Complaint.

**AS AND FOR A RESPONSE TO THE SECOND CAUSE OF ACTION**

7. Answering defendants repeat, reiterate and reallege each and every denial and denial of knowledge or information sufficient to form a belief heretofore made in regard to each and every paragraph of plaintiff's Amended Complaint designated as paragraphs "1" through "19" in the First Cause of Action inclusive with the same force and effect as though more fully set forth at length herein.

8. Answering defendants deny each and every allegation contained in paragraphs marked "21", "23", "24", "25", "26" and "27" of plaintiff's Amended Complaint.

9. Answering defendants deny each and every allegation contained in paragraph marked "22" of plaintiff's Amended Complaint, except admit that on September 22, 2006,

defendant, NEW ENGLAND MOTOR FREIGHT, INC. owned a 1998 Volvo Tractor assigned New Jersey license # AE849B that was operated by defendant RICHARD WELLS.

**AND AS FOR A FIRST AFFIRMATIVE DEFENSE**

10. The plaintiff's claims are barred, or in the alternative, the damages to which the plaintiff may be entitled are limited as may be applicable by the Doctrine of Sudden Emergency and/or Avoidable Consequences and/or Unavoidable Accident and/or Assumption of Risk.

**AND AS FOR A SECOND AFFIRMATIVE DEFENSE**

11. The Complaint filed herein fails to state a cause of action as against these answering defendants upon which relief can be granted.

**AND AS FOR A THIRD AFFIRMATIVE DEFENSE**

12. That any verdict in the within action, for past, present, and future medical care, dental care, custodial care, or rehabilitation services, loss of earnings or other economic loss, should be reduced by the amount that any such expense has or will with reasonable certainty be replaced or indemnified in whole or in part of or from collateral source, in accordance with the provisions and limitations of Section 4545 (c) of the CPLR.

**AND AS FOR A FOURTH AFFIRMATIVE DEFENSE**

13. The plaintiff's sole and exclusive remedy is confined and limited to the benefits and provisions of Article 51 of the Insurance Law of the State of New York.

14. The plaintiff did not sustain serious injury as defined by §5102 of the Insurance Law of the State of New York, and her exclusive remedy therefore, is confined and limited to the benefits and provisions of Article 51 of the Insurance Law of the State of New York.

15. The plaintiff's cause of action is barred by Article 15, §5104 of the Insurance Law of the State of New York.

**AND AS FOR A FIFTH AFFIRMATIVE DEFENSE**

16. The plaintiff has failed to mitigate, obviate, diminish or otherwise act to lessen or reduce the injuries, damages and disabilities alleged in his complaint.

**AND AS FOR A SIXTH AFFIRMATIVE DEFENSE**

17. Although the defendants deny the allegations as to injuries and damages alleged, these injuries and damages, if any, were caused by intervening, preceding or superceding acts, conduct or negligence or third persons, parties, corporate entities and/or independent agencies over whom these answering defendants had no control or responsibility.

**AND AS FOR A SEVENTH AFFIRMATIVE DEFENSE**

18. That any injuries and/or damages sustained by plaintiff, as alleged in the Complaint herein, were caused in whole or in part by the contributory negligence and/or culpable conduct of plaintiff and not as a result of any contributory negligence and/or culpable conduct on the part of these answering defendants.

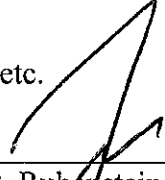
**AND AS FOR A EIGHTH AFFIRMATIVE DEFENSE**

19. The liability of these defendants, if any, to the plaintiff for non-economic loss is limited to its equitable share, determined in accordance with the relative culpability of all persons or entities contributing to the total liability for non-economic loss, including named parties and others over whom plaintiff could have obtained personal jurisdiction with due diligence.

**WHEREFORE**, defendants, RICHARD WELLS and NEW ENGLAND MOTOR FREIGHT, INC., demand judgment against plaintiff dismissing the Amended Complaint against these answering defendants, together with all costs and disbursements of this action.

Dated: Lake Success, New York  
December 11, 2007

Yours, etc.



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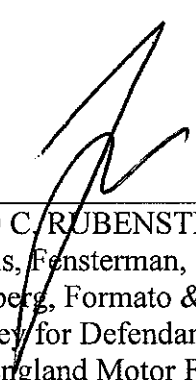
TO: James L. Hyer, Esq.  
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Attorneys for Plaintiff  
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CERTIFICATE OF SERVICE

I hereby certify that, on December 11, 2007, the foregoing Answer and Defenses to Plaintiff's Amended Complaint was filed electronically through the ECF system and a hard copy was addressed and enclosed in a postage paid envelope and deposited in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to plaintiff's counsel as follows:

James L. Hyer, Esq.  
Faga Savino, LLP  
Attorneys for Plaintiff  
1200 Waters Place, Suite 301  
Bronx, New York 10461

Dated: Lake Success, New York  
December 11, 2007



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